

1 A. There is a process for submitting change  
2 orders that exists.

3 Q. And give me an example just a hypothetical  
4 of a situation where a medical provider like  
5 PrimeCare or Wexford could come to the State and  
6 say, we know we bid this to provide the medical for  
7 the State of West Virginia, but this situation  
8 occurred and we have to submit a change order?

9 A. I cannot remember what change orders were  
10 submitted. It would have gone through  
11 Administrative Services, I think. I would have  
12 known at the time. I cannot remember now. But  
13 there were change ordered during my term, yeah.

14 Q. I'm sure. And what I'm looking for is  
15 just an example of a situation where a contractor,  
16 a medical contractor like PrimeCare or Wexford  
17 would submit a change order?

18 A. Honestly, it was not something I would  
19 have negotiated, so I just can't recall what  
20 situation would have -- at this time I just can't  
21 remember what would have initiated a change order.

22 Q. Can we agree that when Wexford became the  
23 medical contractor in 2022, that West Virginia's  
24 inmate population was overcrowded?

1 A. Yes.

2 Q. Can we agree that when Wexford became the  
3 medical contractor for the State of West Virginia,  
4 West Virginia's jails, prisons and juvenile  
5 facilities were understaffed?

6 A. Yes.

7 Q. What impact, if any, does overcrowding and  
8 understaffing have on a medical provider's ability  
9 to carry out services?

10 A. I don't know if I'm competent to answer  
11 that. I really don't know if I'm competent to  
12 answer what ability -- what effect that has on  
13 their ability to provide services. If they are not  
14 able to provide the services, they should make that  
15 known and our contract monitor should make that  
16 known. So that would be the fail safe for that, I  
17 would think.

18 Q. In providing medical for West Virginia's  
19 roughly 30 correctional facilities, how many  
20 physicians does Wexford have?

21 A. I don't know. I don't know what their  
22 numbers -- I don't know what their staffing numbers  
23 are and especially now I would have no idea.

24 Q. Do you know what the numbers were for

1 challenge?

2 A. Not that I can think of.

3 Q. Was overcrowding of our correctional  
4 facilities in West Virginia a systemic challenge as  
5 of January 2018?

6 A. I need look at the numbers, but they've  
7 always been overcrowded.

8 Q. We can do that.

9 Any other systemic challenges or problems  
10 that DCR was facing when you first started?

11 A. As I sit here, nothing comes to mind. I'm  
12 sure that things were -- I'm sure that things were  
13 being brought to me that we were dealing with.  
14 Anthony Center comes to mind as something that  
15 happened shortly after I got there. That was a --  
16 that was something that had to be dealt with.

17 Q. And we're going to talk about Anthony  
18 Center.

19 (Exhibit No. 1 marked for  
20 identification.)

21 BY MR. NEW:

22 Q. Exhibit 1 it's a November 30, 2017,  
23 letter, memo to all correctional employees from  
24 Cabinet Secretary Jeff Sandy Re Corrections

1 a similar memo out, correct?

2 A. I never sent a memo like this out.

3 Q. And that's not really my question. My  
4 question is were things along these lines bad  
5 enough other than the typical grievance, Employee  
6 Assistance Program, anything else that you felt  
7 like something major had to be done to address  
8 these?

9 A. Well, and maybe it's just different  
10 styles. I wouldn't send a memo out to 5000 people  
11 if I had 20 or 30 bad apples. So I'm just saying  
12 that it's always a problem -- if that conduct is  
13 going on, it's always a problem. Would that  
14 occasion me to send a memo out to the field,  
15 probably not. It would occasion me to dig down and  
16 get the individual bad actors.

17 Q. Let's talking about some other systemic  
18 problems within West Virginia's corrections.  
19 Overcrowding, it was bad when you got there in  
20 January of '18, correct?

21 A. Correct.

22 Q. Did it improve any before you left?

23 A. Sadly the only time it improved a little  
24 was at the beginning of COVID. And then towards

1 the end of COVID, it was bad because we couldn't  
2 move people. So did it improve by the time I left,  
3 no. When I left it was probably worse.

4 Q. Understaffing at West Virginia's  
5 correctional facilities, jails, prisons, juvenile  
6 facilities, did it get better in the  
7 four-and-a-half years you were Commissioner?

8 A. It got better and then it got worse and it  
9 continued to get worse.

10 Q. Again, those trends that Chief of Staff  
11 Douglas talked to us about where the recruiting,  
12 the retention, the 2 plus 2 plus 2 plus things like  
13 that get you down to about 600 or thereabouts in  
14 mid 2019, COVID occurs and some other things and by  
15 the time that you leave, you've got about a  
16 thousand employment vacancies in your agency,  
17 correct?

18 A. I need to look at the numbers to make sure  
19 but I don't have any reason to think that that's  
20 not right.

21 Q. It got better a little bit and then got  
22 worse I believe is your testimony, correct?

23 A. Yes.

24 Q. One thing we haven't talked about, you

1 administration prior to Governor Justice being  
2 elected, but when you all start to do the  
3 consolidation and you're starting from the DOC side  
4 to look over at the regional jails and you're  
5 looking over at the juvenile facilities and now all  
6 of a sudden these are under the Commissioner of  
7 DCR, did you ask the question how did we get here?  
8 How did we get to 200 million dollars of deferred  
9 maintenance?

10 A. I'm sure that everybody asks that question  
11 and the answer was we depend on the money that's  
12 allotted to us for what can be done.

13 Q. And what was the money being allotted?

14 A. I would have to go back. Every year there  
15 is a certain amount that is allotted for  
16 maintenance. But it doesn't -- it doesn't touch  
17 what the overarching bill is. And I would -- I  
18 don't have those figures in front of me and I can't  
19 remember. I just know we didn't get what we  
20 needed.

21 Q. Chief of Staff Douglas testified that the  
22 annual allocation for maintenance was 2.25 million?

23 A. Yeah.

24 Q. At -- and so let's just round that down to



1 Commissioner DOC/DCR, it went from bad to worse in  
2 terms of deferred maintenance, did it not?

3 A. Yes.

4 Q. It went from about 190 or 200 million to  
5 277 million, correct?

6 A. Yes.

7 Q. And did you hear Chief of Staff Douglas  
8 testify that recently there was like a 17 million  
9 dollar allocation in additional to the 2.25, did  
10 you hear his testimony on that?

11 A. If I did, I don't remember. Was that an  
12 allocation after I left?

13 Q. Yes, I believe it was an allocation after  
14 you left.

15 A. I don't remember.

16 Q. But even with something like 17 million,  
17 and I understood Chief of Staff Douglas to say that  
18 higher ed, secondary schools and Corrections were  
19 supposed to share in 200 million although he didn't  
20 know the breakdown of that?

21 A. I do remember seeing that in the news.

22 Q. Even if Corrections got all of the 200  
23 million and the 17, there would still need to be  
24 approximately sixty million spent on deferred

1 see if the prisons were full at that time.

2 Q. Okay.

3 So if there is an inmate convicted of a  
4 felony at the Southern Regional Jail, he or she  
5 needs to go to Mount Olive or some other prison,  
6 correct?

7 A. Correct.

8 Q. And if the prisons are full, there is  
9 nowhere to take that inmate, correct?

10 A. Hypothetically that would be true, if  
11 base -- based on their classification as to where  
12 they could go, there could not be a -- it's  
13 conceivable there would not be a place and that  
14 person has to wait.

15 And that's why those programs that are  
16 getting people out of prisons are so critical.

17 Q. And would you agree with me that if  
18 prisons are overcrowded, it's going to make the  
19 maintenance situation worse?

20 A. Yes.

21 Q. And that's just kind of common sense,  
22 isn't it, that if there is a cell that's designed  
23 for one person and it has two or three then  
24 necessarily the plumbing, the beds, all of the



1 Did I go to -- did I have a meeting by  
2 myself with somebody from the Governor's Office?  
3 No.

4 Q. No. And I'm not asking about an  
5 individual meeting that you had with anyone. I am  
6 talking about a group meeting where those concerns  
7 were raised with either members of the Legislature  
8 and/or members of either the Governor or the  
9 Governor's staff and staffing, maintenance,  
10 crowding was talked about?

11 A. Well, there may have been general meetings  
12 and Brian Abraham may have been there with the  
13 Secretary. I can't tell you that that is  
14 specifically what that meeting was about. Those  
15 issues came up. What normally would come up is  
16 what I told you before, we would write a proposal.  
17 We would say, can we have locality pay. Here is  
18 what we want to do. Here are some options. So  
19 that's how it would be presented. And then I -- I  
20 know the Secretary had meetings with the Finance  
21 Committee and I was not part of those.

22 Q. I asked Chief of Staff Douglas the same  
23 question. Where did there seem to be pushback, was  
24 it in the legislature or the Governor's Office or

1 A. Yes.

2 Q. -- that you submitted that went nowhere?

3 A. I -- the Secretary's attorney and I  
4 drafted a proposed locality bill. I don't remember  
5 for what session that was, but we drafted a bill  
6 and we asked for it in another separate proposal.  
7 We had different ways of trying to do it. One was  
8 do it the way they do it in the Eastern -- you  
9 know, do it by locality.

10 And then at another time I wanted to try  
11 doing it by facility so that the Commissioner could  
12 designate at any given time this facility is in  
13 crisis, whether it's Huttonsville or somewhere else  
14 that's sitting in a place that nobody wants to  
15 work. That -- we wrote a bill to that effect. I  
16 know it went somewhere, but nothing happened with  
17 it.

18 That might have been -- that might have  
19 been the last thing submitted before I left. But I  
20 knew there were -- you know, there are always  
21 options that they're playing with for locality pay.

22 Q. Maintenance, I asked Chief of Staff  
23 Douglas this question, State of West Virginia  
24 doesn't get \$277 millions in deferred maintenance

1 overnight, does it?

2 A. No.

3 Q. That's been a problem at least a decade in  
4 the making, would you agree with that?

5 A. Yes.

6 Q. The overcrowding situation, that doesn't  
7 happen overnight, does it?

8 A. No.

9 Q. That problem has been at least a decade in  
10 the making, correct?

11 A. Yes.

12 Q. And the understaffing of West Virginia's  
13 jails, prisons and juvenile facilities, that  
14 understaffing issue doesn't happen just overnight,  
15 does it?

16 A. No, but I don't think -- I wouldn't -- I  
17 would say that that's been more fluid than the  
18 other two problems we've talked.

19 Q. I know that that's been more fluid. If  
20 you just look at the Annual Report from FY '19, we  
21 see the fluidity just within that one fiscal year?

22 A. Right.

23 Q. It was as low as I think 610 on June 30th  
24 of 2019. I've seen Brad Douglas quoted as saying

1 Reinvestment was 2013.

2 Q. '13?

3 A. -- so.

4 Q. Right.

5 So we're now a decade into the enactment  
6 of the Justice Reinvestment Act, correct?

7 A. Correct.

8 Q. And yet there are still portions of it  
9 that are not funded?

10 A. So I -- I would have to say, I don't know  
11 that they are not funded at all, but they are not  
12 fully funded. I just know that it's not as robust  
13 as it could be.

14 Q. And do you agree with Chief of Staff Brad  
15 Douglas that approximately 266 million needs spent  
16 on the deferred maintenance and approximately 50 to  
17 60 million spent on the staffing for the jails,  
18 prisons and juvenile facilities in the State of  
19 West Virginia?

20 A. Yes.

21 Q. And that expenditure of some 310, 320  
22 million dollars wouldn't that go a long way to  
23 correcting the things that so frustrated you as the  
24 Commissioner of DCR for four-and-a-half years?

1 A. Yes.

2 Q. So I don't think it would take a better  
3 person in the seat, all due respect, ma'am, you  
4 said a little bit earlier. I think you could have  
5 done a whole lot with 310 or 320 million dollars,  
6 don't you agree?

7 A. I think anybody could have in that seat.

8 Q. What else besides the deferred maintenance  
9 and the staffing needs an influx of capital?

10 A. Well, I think the -- you know, the influx  
11 with the staffing will allow program development.  
12 You know, right now you have program people  
13 standing security posts. Now, that's more of a  
14 prison problem than a jail issue, but -- and the  
15 same with a lot of re-entry and programing. We had  
16 started and had such high hopes for the jail side  
17 of things, but security has to be the first  
18 priority and -- so I think -- I think you can see a  
19 lot, you know, you could expand on a lot of things  
20 if you could take care of those underlying.

21 Q. So downstream from security on things like  
22 staffing, conditions with maintenance, things like  
23 education, drug counseling, all of those things  
24 that people like yourself aspire to and with

1 A. I do not. I know it's over 200 million,  
2 isn't it? I don't know.

3 Q. Hoppy Kercheval Tweeted just today that  
4 Governor Justice proudly announced a budget surplus  
5 of 1.8 billion dollars.

6 A. I guess that is over 300 million.

7 Q. Do you know why with the a budget surplus  
8 of 1.8 billion dollars the State of West Virginia  
9 is not spending this 310 to 320 million dollars on  
10 corrections that's so badly needed and was when you  
11 were the Commissioner?

12 MR. MURRAY: Objection.

13 THE WITNESS: No.

14 BY MR. NEW:

15 Q. The spirit is willing but the flesh is  
16 weak, you ever heard that?

17 A. I certainly have.

18 Q. Turn over to page 12624 and page 9 of 26  
19 of the Lesson Plan.

20 A. Okay.

21 Q. As far back as 1946, the State of  
22 West Virginia found the county's jails to be in  
23 anachronisms and totally unfit for human  
24 habitation. Study went on to recommend that the



1 county's jails be consolidated into regional jails  
2 and adequate numbers of appropriately trained  
3 staff.

4 And then we see over there in the small  
5 print the West Virginia Regional Jail and Prison  
6 Authority was established by legislative action in  
7 1985. So it only took 39 years, 39 years for the  
8 State of West Virginia to come up with a regional  
9 jail system, correct?

10 A. That's what it looks like from this.

11 Q. And then from 1985 if you turn over here  
12 and look at the order of opening from '85 it look  
13 took another 20?

14 A. What? I'm sorry.

15 Q. Page 11 of 26.

16 A. I see it. All right.

17 Q. It took 20 years for West Virginia to open  
18 all of the regional jails that it needed, correct?

19 A. Correct.

20 Q. So from 1946 when it was first recommended  
21 to June of 2005 by my calculation 59 years it took  
22 the State of West Virginia to get around to opening  
23 regional jails to make uninhabitable, humanly  
24 uninhabitable jails in counties no longer a thing.

1 So West Virginia has known for a long time  
2 that it needs to spend money to house and care for  
3 inmates, correct?

4 A. Correct.

5 Q. And, in fact, if you look over at the  
6 lesson plan page 16 of 26, it's telling people in  
7 this training litigation can be daunting. The  
8 authority will spend a great deal of time and  
9 energy defending a suit. Inmates generally file  
10 two types of lawsuits against jails. Suits for  
11 monetary damages and suits for declaratory or  
12 injunctive relief.

13 And declaratory or injunctive relief  
14 specifically mentions in this training  
15 overcrowding, correct?

16 A. Yes, I see it.

17 Q. And it specifically lists lack of medical  
18 treatment, correct?

19 A. Yeah.

20 Q. And then there on page 17, 18, and 19  
21 lists some ways to try to deal with those  
22 liabilities posed for monetary damage, lawsuits and  
23 declaratory or injunctive relief lawsuits, correct?

24 A. Yes.